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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,480	01/24/2002	William John Martin		2239

7590 06/29/2004

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EXAMINER

FOLEY, SHANON A

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/058,480	<b>Applicant(s)</b> MARTIN, WILLIAM JOHN	
	<b>Examiner</b> Shanon Foley	<b>Art Unit</b> 1648	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-14 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 and 2, drawn to a method to test for the ability of a stealth virus to induce the production of magnetic and/or paramagnetic material in cells, classified in class 436, subclass 74.
- II. Claim 3, drawn to a method of testing the ability of a magnetic field to cause damage to stealth virus infected cells, classified in class 435, subclass 4.
- III. Claims 4-9, drawn to a method of treating a stealth virus infection by exposing infected cells within a patient to a magnetic field, classified in class 600, subclass 9.
- IV. Claims 10 and 11, drawn to a method of treating a stealth virus infection by exposing stealth virus infected bacteria within a patient to a magnetic field, classified in class 600, subclasses 411.
- V. Claims 12 and 13, drawn to a method of destroying stealth virus infected cells in a biological sample by exposure to a magnetic field, classified in class 435, subclass 7.21.
- VI. Claim 14, drawn to a method of destroying stealth virus infected bacteria in an environmental sample by exposing the sample to a magnetic field, classified in class 588, subclass 210.

The inventions are distinct, each from the other because of the following reasons:

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Inventions I-VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are drawn to various methods comprising different method steps and result in different outcomes. The method of group I is drawn determining a property of a stealth virus, i.e. whether the stealth virus induces the production of magnetic and/or paramagnetic material in cells. In contrast, the methods of groups II-VI do not determine characteristics of a stealth virus. The method of group II is drawn to determining whether a magnetic field causes damage to stealth virus infected cells while groups III-VI are drawn to treating or destroying stealth virus infection by applying magnetic field energy. However, the methods of groups III-VI do not require the same treatment populations. The methods of groups III and IV are drawn to treating stealth virus infection, but the method of group III requires an in vivo treatment of any stealth virus infected cell within a patient while the method of group IV specifically requires exposing stealth virus infected bacteria within a patient to a magnetic field. These in vivo treatment methods differ from the in vitro methods of group V, drawn to destroying infected cells in any biological sample by exposure to a magnetic field, and the method of group VI, drawn to destroying stealth virus infected bacteria in an environmental sample.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and divergent subject matter, restriction for examination purposes as indicated is proper.

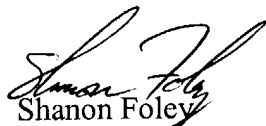
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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shanon Foley whose telephone number is (571) 272-0898. The examiner can normally be reached on M-F 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (571) 272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Shanon Foley  
Patent Examiner, 1648